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10/037,443	12/21/2001	L. John Teuscher	BAL-108 (17451)	4830

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EXAMINER

BOCHNA, DAVID

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/037,443

**Applicant(s)**

TEUSCHER ET AL.

**Examiner**

David E. Bochna

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 9-15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzen et al '123 in view of Webb and Linder.

In regard to claims 1, 9 and 18, Lorenzen et al. discloses a connector comprising:

A body 44 having a first end defining a single opening 32 and a second end defining a single opening 34, the body having a passage disposed therethrough from the first end to the second end to allow for transport of fluids and object through the body, the passage changing direction at a single constant angle of approximately 120 degrees between the first end 32 and the second end 34, wherein the first end includes a coupling 88 configured to rotatably engage a first member of the respiratory assembly, wherein the second end includes a coupling 88' configured to rotatably engage a second member of the respiratory assembly. However, Lorenzen et al. does not disclose that the only access to the passage is through the openings of the first 32 and second ends 34. Webb and Linder demonstrate that making respiratory tubes, where the only access to the interior passage is through the openings of the first and second ends, is common and well known in the art. Therefore it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to make the connector of Lorenzen have only access to

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the passage through the openings of the first and second ends, because the practice of making respiratory connectors in this fashion is common and well known in the art, as demonstrated by both Webb and Linder.

In regard to claims 2 and 11, the first member is a tracheal tube and the second member is a ventilating tube (see col. 6, lines 50-52).

In regard to claims 3 and 12, the first and second end couplings include hollow female bell housings 52.

In regard to claims 4 and 13, the first end coupling includes a first sleeve 90 within the bell housing, the entire circumference of the first sleeve is rotatable with respect to the first end so that the first sleeve remains in rotating engagement with the first end, the first sleeve sized to receipt of the first member therein such that the first end rotatably engages the first member; and

The second end coupling includes a second sleeve 90 within the bell housing, the entire circumference of the second sleeve is rotatable with respect to the second end so that the second sleeve remains in rotating engagement with the second end, the second sleeve sized for receipt of the second member therein such that the second end rotatably engages the second member.

In regard to claims 5 and 14, the first sleeve 90 has a first annular sealing member 63 on one end thereof for engagement with a first annular rib 62 on the first end, engagement between the first annular sealing member and the first annular rib causes deflection of the first annular sealing member to create an essentially hermetic seal between the first sleeve and the first end (see col. 6, lines 30-34); and

The second sleeve has a second annular sealing member 63 on one end thereof for engagement with a second annular rib 62 on the second end, engagement between the second

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annular sealing member and the second annular rib causes deflection of the second annular member to create an essentially hermetic seal between the second sleeve and the second end.

In regard to claims 6 and 15, the first and second ends each having a stepped annular ring 58; and further comprising a first and second retainer 104 disposed in the respective annular rings for retaining the first and second sleeve in engagement with the respective first and second ends.

3. Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzen et al. '123 in view Webb and Linder and further in view of Palmer. Lorenzen discloses a connector as described above. However, Lorenzen does not disclose that the connector is transparent. Palmer teaches making the connector out of a transparent material so that fluids passing through and collecting in the connector can be visually inspected without taking apart the connection (see claim 15 of Palmer). Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the connector of Lorenzen et al. to include a transparent material, as taught by Palmer, so that the connector's interior could be more easily inspected.

4. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer '203 in view of Lorenzen et al. '123 and further in view of Webb and Linder.

In regard to claims 1, 9-10 and 18, Palmer '203 discloses a connector for a respiratory assembly comprising a first section 48 being substantially cylindrical in shape, the first section having a first axis, the first section defining a single opening (at 54) the first section having a first passage there through to allow for transport of fluids and objects through the first section, the first section rotatably engageable with a first member of the respiratory assembly;

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a second section 48' being substantially cylindrical in shape and being connected to the first section, the second section having a second axis, the second section defining a single opening (at 54') the second section having a second passage there through in communication with the first passage to allow for transport of fluids and objects through the second section, the second section rotatably engageable with a second member of the respiratory assembly.

However, Palmer does not disclose that the angle between the first and second end is 120 degrees or that the only access to the first and second passages is through the openings of the first and second sections.

Lorenzen et al. teaches that making respiratory connectors with a single constant 120 degree (angle between 106 and 108) is common and well known in the art. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the coupling angle of Palmer '203 to include a 120 degree angle, because making connectors for respiratory assemblies at angles of 120 degrees is well known and common in the art, as demonstrated by Lorenzen.

Webb and Linder demonstrate that making respiratory tubes, where the only access to the interior passage is through the openings of the first and second ends, is common and well known in the art. Therefore it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to make the connector of Lorenzen have only access to the passage through the openings of the first and second ends, because the practice of making respiratory connectors in this fashion is common and well known in the art, as demonstrated by both Webb and Linder.

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In regard to claims 2, 8, 11 and 17, the first member is a tracheal tube and the second member is a ventilating tube (see column 4, line 44).

In regard to claims 3 and 12, the first and second end couplings include hollow female bell housings 56, 62'.

In regard to claims 4, 5 and 13-14, a first sleeve 98, and a second sleeve 98' are included, both engage first annular ribs 70, 63' causing deflection (see fig. 6).

In regard to claims 6 and 15, each end has a stepped annular ring 106 and retainers 104.

In regard to claims 7 and 16, the body is made of plastic are made by injection molding and are substantially transparent (see claim 15).

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. Bochna whose telephone number is (703) 306-9040. The examiner can normally be reached on 8-5:30 Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Browne can be reached on (703) 308-1159. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.



**David Bochna**  
**Primary Examiner**  
**Art Unit 3679**  
**May 12, 2004**